IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1953 OF 2007

Deepika Subhash More) .. Petitioner.

V/s.

1. State of Maharashtra) .. Respondents.
through its Secretary, Tribal)
Development Department,)
Mantralaya,Mumbai32.)
and others.

Mr.R.K.Mendadkar for the Petitioner.

Mr.P.P.Kakade, Assit. Govt.Pleader for the Respondent Nos.1 to 3.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 22nd MARCH, 2007.

P.C. :- (Per R.M.SAVANT,J.)

. By this petition filed under Article 226 of the Constitution of India, the petitioner challenges the order dated 9th March, 2007 passed by the Respondent No.2 Committee, invalidating the caste certificate issued to the petitioner as belonging to Thakur, which is a scheduled tribe.

2. The petitioner is presently pursuing the M.B.B.S. degree course in the Respondent No.4 College.

The petitioner was admitted to the said course pursuant to the directions issued by this court in writ petition No. 4152 of 2005. The petitioner's tribe certificate as belonging to the Thakur tribe was also directed to be decided pursuant to the orders passed by this court in earlier round of litigation being writ petition No. 6793 of 2005. During the pendency of the petitioner's tribe claim, the petitioner has passed the first MBBS examination and is presently studying for the second MBBS in the Respondent NO.4 college.

3. The petitioner in the instant case, as indicated above, claims to be belong to the "Thakur Tribe" which is a Schedule Tribe. The entry "Thakur" appeares at serial No.44 in the Schedule Tribes list is pertaining to the State of Maharashtra. The word Thakur is also included in the following categories :

i) Thakur/Thakar (Ka Thakur/Thakar, Ma Thakur/Thakar) is included at Sr.No. 44 in the Scheduled Tribes list.

ii) Thakur/Thakar is included in the list of Nomadic Tribe at Sr.No.22. They lead nomadic way of life, move from village to village.

iii) Thakur is included in Advanced Caste such as Kshatriya, Thakurs, Rajput Thakurs, Sindhi Thakurs.

iv) Thakur is also called Balutedar caste such as Grambhat, Bramhabhat.

4. In view of the said position, the claim as belonging to Thakur, Scheduled Tribe is not possible to be decided relying on the documentary evidence above; therefore, the claim has to be decided by verifying the traits, characteristics and customs given by the applicant. This test which is a crucial test for deciding the claim as belonging to Thakur, is fortified by the view taken by this court in Writ Petition No.2088/1986 and writ petition No. 917 of 1986 and Writ Petition No 1197/1986.

5. The Constitution Scheduled Tribes' order was first issued on 6.9.1950. Subsequently, the Constitution Scheduled Tribe (Amendment) Order was issued on 29.10.1956. The said order of 1956 prescribed the area restrictions in respect of certain entries in the Schedule. Insofar as the Thakur community belonging to the scheduled tribe was concerned, it was scheduled

only in respect of 25 tahsils of five districts i.e. Ahmednagar, Kolaba, Nasik, Poona and Thane district of the State of Maharashtra. The said area restrictions were in operation from 01.11.1956 to 26th July,1977. In 1976, the constitutional Scheduled Tribe (Amendment) Order in No.108/1977 came into effect by which amendment the area restrictions were removed. The removal of area restrictions meant that the persons coming from Thakur community would have to establish that they or their predecessors have migrated from a schedule area after the removal of the area restrictions.

6. Another consequence which flowed from the removal of area restrictions was that as a result of the said removal of area restrictions certain communities having similar nomenclature staying outside the tribal area and also the communities which belong to different ethnic stocks but having similarity of nomenclature started claiming the status of those scheduled tribes which were confined to their original habitat in tribal pockets. It was observed that this trend became more serious and cognizable as sizeable number of such claimants were endeavouring to claim the benefits of the constitutional reservations.

7. It has, therefore, become necessary for the

scrutiny committee to verify the claim not only by relying on the documents submitted but also by applying the affinity test. It is significant to note that in the instant case, the ordinary place of the petitioner's family is Upkhed Tal.Chalisgaon, Dist.Jalgaon. The said place of residence was not a scheduled area for Thakur tribes at the time of the Presidential Order. It is also not the case of the petitioner or her father that she hails from such a scheduled area or her family was a resident of the scheduled area on the date of the notification. It is incomprehensible that only one family of the Thakurs is residing at the said ordinary place of residence of the petitioner i.e. Upkhed, Tal.Chalisgaon, Dist.Jalgaon. The said circumstance, therefore, in our opinion, is rightly held to be against the petitioner insofar as her claim as belonging to Thakur schedule tribe is concerned.

8. Mere mentioning of the name 'Thakur' against the caste column in any public document cannot be a sole ground to hold that person belongs to Thakur, Scheduled Tribe. As Thakurs are found amongst Kshatriya, Rajput, Sindhi, Maratha, Bramhins etc.. In the said circumstances, as indicated above, the affinity test becomes crucial. The petitioner, according to the committee has not established her affinity and ethnic

linkage towards the Thakur, Scheduled Tribe community. The information regarding traits, characteristics, custom and god goddesses, deities etc., given by the petitioner in "E" form, interview sheet and during the course of vigilance inquiry, does not match with that of Thakur, Scheduled Tribe Community. During the course of hearing the petitioner stated that the surnames of her relatives are Jadhav, Khadtarkar, Chavan. The petitioner's father also could not explain about the "Dhanyabhet" and "Umarya-Umari" custom. According to the Committee, the petitioner's father could not establish any affinity and ethnic linkage towards the Thakur, Scheduled Tribe community appearing at Sr.No.44 in the list of scheduled tribe in the State of Maharashtra. We do not find any infirmity in the said finding of the committee.

9. Insofar as the documentary evidence is concerned, it is significant to note that the petitioner has furnished the record pertaining to his grand father Ramdas Motiram Thakur, wherein the caste is mentioned as 'Thakur'. This record pertains to the year 1930. This record would go to show that the petitioner's grand father was educated even prior to independence. The Committee has cast a serious doubt in respect of the said document; as according to the Committee in the

British days, the people who were living in isolation on hilly and remote areas were called as tribes and subsequently notified. The said tribes were backward with no educational background, which continued even during post independence period. The petitioner's grand father is supposed to be admitted in school in the year 1930. Coupled with the fact that the ordinary place of residence of the petitioner's family is Upkhed Tal.Chalisgaon, Dist. Jalgaon, the conclusion of the committee that the said documentary evidence could not be given credence or reliance placed upon it cannot be faulted with.

10. In respect of the other documents, the committee has rightly observed that mere mentioning of the name 'Thakur' in the said documents would not further the case of the petitioner since there are Thakurs in other communities, as mentioned hereinabove. The affinity test in respect of the Thakur, Scheduled tribes was very crucial. The petitioner having failed in the said affinity test, the said document would be of no relevance.

11. Much was sought to be made in respect of the caste validity certificate issued in favour of the petitioner's sister Vibha Subhash More. It appears that

the Scrutiny Committee issued the said certificate of validity to the petitioner's sister in view of the observations made by this court in Writ Petition No. 2746 of 1998 and 5454 of 1998 and 356 of 1998 and the law as enunciated by this court at that time. This court while deciding the said petition had followed the ratio of the decision of the Apex Court in the case of Palghat Jilla Thandan Samudhaya Samrakshana Samithi and Anr. Vs. State of Kerala andAnr. reported in 1994 (1) SCC 359. However, in another case while deciding the case of one Sunil Murlidhar Thakur, the Apex Court observed that the view taken by this court was not right in disposing of the said petition by referring to the decision of the Apex Court in Palghat Jilla Thandan Samudhya Samrakshan Samithi (Supra). The Committee, therefore, rightly came to the conclusion that the grant of validity certificate to the petitioner's sister would be of no consequence. We therefore, do not find any merit in the submission of the petitioner that since the petitioner's sister was granted the validity certificate the same should follow in the case of the petitioner also.

12. The Committee considering the observations of this court in various matters decided and verified the tribe claim of the petitioner by comparing the case made

out by the petitioner in the contest of the said Thakur tribe appearing at serial No.44 in the schedule tribe list. The committee came to a conclusion that the information given by the petitioner and her father during the course of personal hearing and the information recorded by the vigilance Cell during the enquiry does not bear her relations with the Thakur Schedule Tribe and therefore, the Committee invalidated the tribe certificate issued in favour of the petitioner.

13. We do not find any infirmity or illegality committed by the said Committee for us to interfere in the extraordinary writ jurisdiction of this court under Article 226 of the Constitution of India and we accordingly dismiss the above petition.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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